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**U.S. COURT IS  
ASKED**

**TO REVIEW  
FRANK CASE**

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Attorney Alexander  
Makes  
Point That Georgia  
Court  
Erred on Federal  
Law

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(Special Dispatch to *The Journal*.)

WASHINGTON, Nov. 30.—Leo M. Frank's application for a Review of his conviction in Georgia Courts for the murder of Mary Phagan, an Atlanta factory girl, came before the entire Supreme Court today after having been previously denied by two individual justices, one of whom expressed the opinion that Frank had not had due process of law.

Chief Justice White received the motion, saying only that the Court would take the papers. A decision may be announced next Monday. Frank's Attorneys contend he did not have a fair trial because of the hostile demonstrations against him in Atlanta.

H. A. Alexander, of Counsel for Frank, personally called the motion to the attention of the Court.

The Attorney agreed with Justices Lamar and Holmes, who in refusing to grant the Writ, held that the question for Review is a decision of the Georgia Court of Appeals on procedure, namely, whether the motion to set aside the verdict of conviction was made in due time by Frank's Attorneys.

The Attorney contended, however, that the Georgia Court would not have reached its decision if it had not erred on a fundamental point of Federal Law, namely whether Frank had been given a fair trial because he had been compelled to stay away from the Court Room on the day the verdict was rendered for fear of violence. He argued that the Court should grant the application so as to correct this Error.

In the Brief, in support of his motion for leave to petition for a Writ of Error, Mr. Alexander recited the well-known facts of the progress of the Case through the lower Courts. He emphasized as the basis of his claim for the Writ, the absence of Frank and his Attorney from the Court Room when the verdict was returned, "due" he alleged, "to a private statement made to Counsel by the presiding Judge just before beginning his charge and without the knowledge of the petitioner that he and his Counsel would probably be in danger of their lives should they remain in Court" and the verdict be for acquittal.

Mr. Alexander declared that the absence of Frank and his Counsel was involuntary and not a waiver of his constitutional right to be present and that his Counsel did not waive his rights for the accused, "because the Waiver was extorted from them by the extraordinary excitement and terror surrounding the trial and the statement of the Judge."

Mr. Alexander claimed in his Brief that a Federal Question is presented in the Supreme Court involving the rights of the accused by the refusal of the Georgia Supreme Court to grant the Writ of Error to the United States Supreme Court. Mr. Alexander claims that while the Georgia Supreme Court decided a question of state procedure, it also passed upon a question of Federal Right.

The Court will probably not hand down its opinion before next Monday, December 7.

The Supreme Court occupied two hours, all of the time before the Lunch Hour, in delivering opinions, and at 2 o'clock recessed thirty minutes for Lunch. When it reassembled at 2:30 p.m., Harry Alexander made the formal motion for

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## **PDF PAGE 2, COLUMN 1**

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**(Continued From Page One.)**

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the Frank Writ of Error. The motion was taken under advisement, and an opinion will probably be given next Monday.

Louis Marshall of New York will also file a Brief. Mr. Alexander submitted a Brief in support of the motion, which was set for "leave to file a petition for a Writ of Error to the Supreme Court of Georgia." Mr. Alexander may leave for Atlanta tonight.

## Judge Hill III, Another May Resentence Frank

The remittitur in the Frank Case is expected to reach the Superior Court from the Supreme Court on Tuesday morning.

The Solicitor General will then take a Writ of Habeas Corpus on which Frank will be brought before the Court, to be resented.

This will be done probably about Thursday of this week.

Judge Ben H. Hill is ill at his residence, and if his illness continues, it is likely that the Solicitor will ask one of the Judges of the Civil Division of the Superior Court, to preside for him.

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